

Hon. Neal P. McCurn
Civil Action File No. CV-00495

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF NEW YORK

ELAINE L. CHAO, SECRETARY OF LABOR, : Civil Action
UNITED STATES DEPARTMENT OF LABOR, :
 : File No. 08-CV-00495
Plaintiff, :
 : CONSENT JUDGMENT

v.

ABE & NICK INC. d/b/a BARCLAY HEIGHTS :
DINER, SELENA & NICK'S DINER, INC., :
And NEFTALI LOPEZ, Individually :
 :
Defendants. :

Plaintiff, the Secretary, has filed her complaint, and Defendants ABE & NICK INC. d/b/a BARCLAY HEIGHTS DINER, SELENA & NICK'S DINER, INC., and NEFTALI LOPEZ appeared by Counsel and, without admitting or denying any of the violations alleged in the complaint, agree to the entry of this Judgment without contest. Defendants acknowledge their responsibilities pursuant to this agreement, and acknowledge that they will be subject to sanctions in contempt of this Court if they fail to comply with the provisions of this Judgment. It is, therefore, upon motion of the attorneys for plaintiff and for cause shown:

I. ORDERED that defendants ABE & NICK INC. d/b/a BARCLAY HEIGHTS DINER, SELENA & NICK'S DINER, INC., and NEFTALI LOPEZ, their officers, agents, employees, and all persons acting or claiming to act in their behalf and interest are permanently enjoined and restrained from violating the provisions of

sections 6, 7, 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. Section 201 et seq.), (the Act), in any of the following manners:

(1) Defendants shall not, contrary to Section 6 of the Act, pay to any of their employees who in any workweek are engaged in commerce or in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at rates less than those which are now, or which in the future may become, applicable under Section 6 of the Act.

(2) Defendants shall not, contrary to Section 7 of the Act, employ any of their employees in any workweek who are engaged in commerce or in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than the hours now, or which in the future become, applicable under Sections 7 and 15(a)(2) of the Act, unless the employees receive compensation for their employment in excess of the prescribed hours at rates not less than one and one-half times the employees' regular rates.

(3) Defendants shall not fail to make, keep, and preserve adequate records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the Regulations issued pursuant to Section 11(c) of the Act and found at 29 CFR Part 516.

Further, the Court finding, as agreed by defendants that minimum wages and overtime compensation are due certain employees in the amount of \$16,512.50, it is

II. ORDERED that the defendants and all persons acting or claiming to act in their behalf and interest are enjoined and restrained from withholding the payment of \$16,512.50 due to their employees. Defendants shall forward a certified check or money order payable to "Wage and Hour Division, U.S. Department of Labor" to be mailed or delivered to the U.S. Department of Labor, WHD, Northeast Regional Office, The Curtis Center, Suite 850 West, 170 S. Independence Mall West, #850 West, Philadelphia, PA 19106-33177.

III. Defendants shall make available to plaintiff the social security number and last known address of each employee or former employee listed in Exhibit A of this judgment.

IV. Neither defendants nor any one on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid as back wages under this Judgment.

V. Any sums not distributed by plaintiff to the employees, or to their personal representatives because of inability to locate the proper persons or because of such persons' refusal to accept such sums, shall be deposited with the Clerk of this Court who shall deposit such money with the Treasurer of the United States pursuant to 28 U.S.C. §§2041 and 2042.

VI. ORDERED that the defendants shall orally advise all their employees in Spanish and English of the employees' rights under the Fair Labor Standards Act, and the terms of this Judgment, including the payment of minimum wages and overtime and the rights of employees to engage in activity protected by the Act without fear of retaliation. This oral advice to employees shall take place within 30 days of the entry of Judgment on a workday;

IX. ORDERED that defendants shall place posters provided by the Wage and Hour Division with information about the FLSA where employees may view them;

X. ORDERED that neither the commencement of this action nor the provisions of this Consent Judgment shall in any way affect, determine, or prejudice any and all legal rights of any employees or former employees of defendants not listed in Exhibit A, be they current or former employees, to file any action against defendants under section 16(b) of the Act, or likewise for any current or former employee listed in Exhibit A to file any action against defendants under section 16(b) of the Act for any violations alleged to have occurred after January 5, 2008.

XI. ORDERED that each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

DATED: 7/22, 2008
Syracuse, New York


NEAL P. McCURN
United States District Judge

Defendants appeared by counsel
and consent to the
entry of this Judgment.

CORP.
SEAL

ABE & NICK, INC. d/b/a
BARKLEY HEIGHTS DINER

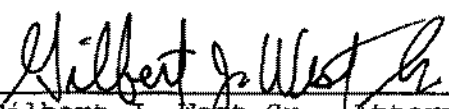
BY: 
NEFTALI LOPEZ, President

CORP.
SEAL

SELENA & NICK'S DINER, INC.

BY: 
NEFTALI LOPEZ, President


NEFTALI LOPEZ, Individually


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Carol Fitzpatrick

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